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MUNICIPAL CORPORATIONS—LOCAL SELF-GOVERNMENT—FIREMAN AS A STATE OFFICER.—Action to recover salary alleged to be due. Plaintiff was a fireman who was receiving \$50 per month from the municipality. By legislative act the salaries of the employees of the fire department were increased, that of fireman being advanced to \$65 a month. *Held*, that such legislation, even in the absence of any express inhibition in the state constitution, was invalid, because it was an interference with the right of local government, which was never delegated to the state. *Lexington v. Thompson* (1902),—Ky.—, 68 S. W. Rep. 477, 57 L. R. A. 775.

The courts, in the determination of questions involving local government, have taken four positions:—(1) The principle of local government is supported by the spirit of the state constitution. (2) The right of self-government was reserved to the people at the time of the adoption of the state constitution. (3) In some states the right is guaranteed by express limitation in the constitution. (4) The right of control in municipal affairs is generally conceded to the state. AMER. & ENG. ENCY. OF LAW, title *Municipal Corporations* Vol. 20, p. 1219. The counsel for the plaintiff arguing under the fourth item of this classification, claimed that state legislature had unlimited power though within its jurisdiction in so far as the Federal constitution did not limit it. Historically the second division would meet with more favor. As VON HOLST, (Const. Law, p. 27), has well said, a legislature is subject to "implied restrictions" as well as that it acts under "implied powers," because certain rights existed before constitutions were adopted. A constitution must be regarded as but the frame-work of government, the afterthought of a pre-existing condition. When, then, a municipality becomes incorporated it possesses a double personality. In the one existence it is an agent of the state in so far as it exercises functions of a public character. In this aspect the power conferred upon it by the legislature is merely discretionary and may be revoked at the will of the principal. In its other existence it is like all other private corporations, capable of acquiring and managing property for the benefit of the community, protected under the same laws and subject to the same liabilities. See, *People v. Hurlbut*, 24 Mich. 94, 9 Am. Rep. 103, and *People v. Detroit*, 28 Mich. 228, 15 Am. Rep. 202. The counsel for the plaintiff also cited many cases in support of his contentions, tending to show that state laws controlling the municipal police were valid. There can be no doubt but that the courts have with unanimity declared that the state could in the absence of express prohibition, exercise control, but on the ground that the protection of life and property and the guarantee of public tranquillity were public duties and that municipal peace officers were a part of the state constabulary. *Newport v. Horton*, — R. I. —, 47 Atl. Rep. 312, 50 L. R. A. 330; *State v. Kolsem*, 130 Ind. 434, 14 L. R. A. 566, 29 N. E. Rep. 595; *Mayor v. State*, 15 Md. 376, 74 Am. Dec. 572; *Kansas v. Hunter*, 38 Kansas 578; *Ohio v. Covington*, 28 Oh. St. 102. If it can be established that the duties of a fireman are of a like nature, *i. e.*, of a public character, with those of a policeman, the decision of the Kentucky courts would not seem to accord with authority. Though there are few, if any, cases where the question has directly come before the courts, two Nebraska decisions may prove valuable. In *State v. Moores*, 55 Neb. 480, the constitutionality of a legislative act which conferred upon the governor the power to appoint a board of police and fire commissioners for the city of Omaha was challenged. The court declared the legislation invalid on the ground that the maintenance of a fire department was of so local a nature that legislative interference could not be tolerated. Three years later in *Redell v. Moores*, 55 L. R. A. 740, the validity of parts of the same act were questioned and in that case the court overruled its

former decision and denied the whole doctrine of local self-government. Recognizing the principle of self-government, but conceding that the protection to life and property be a state duty, it would seem that protection from fire, as well as security from infringements and trespasses, is such a public duty as may devolve upon the state.

MUNICIPAL CORPORATIONS—POLICE POWER—SHIFTING OF A PUBLIC BURDEN—IMPAIRMENT OF CONTRACT.—Action by the city of Chicago against the defendant corporation, a street railway company, to recover fines for the violation of a city ordinance. The ordinance provided that the several railway companies of the city be required to clean the streets between their rails, and that a fine be imposed for a violation of the same. *Held*, that the ordinance was valid, as it was a reasonable exercise of the police power delegated to the municipality by the state. *City of Chicago v. Chicago Union Traction Co.* (1902), — Ill. —, 65 N. E. Rep. 243.

It was urged for the defendant corporation that under the guise of the police power the municipality could not shift a public burden. The court admitted the truth of the principle, but distinguished its holding in *Gridley v. City of Bloomington*, 88 Ill., 554, 30 Am. Rep. 566, and *City of Chicago v. O'Brien*, 111 Ill., 532, 53 Am. Rep. 640, where ordinances were declared invalid which attempted to impose upon the abutting owner the duty of keeping the sidewalks and gutters free from snow and ice in front of his premises, upon the ground that in this case under its charter the defendant corporation had been granted special privileges in the use of the streets, such as other persons, natural or artificial, did not possess. The counsel for the defendant also contended that the ordinance was in violation of the charter, which was a contract between the city and the defendant corporation and could not be impaired. The court reserved its opinion as to whether the ordinance would not fall within a fair construction of the terms of the charter, but declared that, however the charter might be interpreted, no contract was valid which attempted to alienate such governmental powers as were calculated to preserve the welfare of the public. The police power having been delegated to the city, its surrender was beyond the capacity of a municipal corporation. The ultimate conclusion reached by the court accords with an apparently undisputed line of authority, though many courts might not agree with the Illinois courts in declaring that an abutting owner could not be assessed for the entire cost of the improvements to the premises. *City of Ottawa v. Spencer*, 40 Ill., 211. A recent decision in the federal supreme court, *Norwood v. Baker*, 172 U. S. 269,—holding that a special assessment upon abutting property without taking special benefits into account is a taking of property without due process of law,—may cause some courts henceforth to coincide with the views of the Illinois courts. But admitting the conclusions in the Illinois cases, the court rightly drew a distinction between an abutting owner and a railway corporation which by its charter holds a qualified fee in the streets over which its cars run. Where it is provided in the charter that the railway company shall pave the streets between the tracks, or keep the same in good order and repair, etc., little difficulty has arisen, as in such cases the agreement to submit to such regulations forms a part of the consideration of the charter. But the difficulty which has caused litigation occurs when the municipality reserves no police control over the corporation in the charter, and subsequently imposes such burdens as in the present case. In considering the contention that the enforcement of such regulations impairs the obligation of contract, two facts must be remembered: (1) That the municipality cannot contract away its delegated police power, and (2) that a street railway company, acting under a license or franchise, occupies quite a different posi-